

Crime and Policing Bill

Amendment 470 - Safeguards against abuses by Covert Human Intelligence Sources

Briefing

January 2026

Introduction

1. The Covert Human Intelligence Sources (Criminal Conduct) Act 2021 (the “**CHIS Act**”) introduced the framework regulating public authorities’ ability to authorise covert human intelligence sources (“**CHIS**”) to commit crimes through the granting of a Criminal Conduct Authorisation (“**CCA**”). In our view, this does not contain sufficient safeguards against abuse, particularly where such acts risk falling beyond the scope of their authorisation.
2. The following briefing sets out how Amendment 470 to the Crime and Policing Bill, in the names of Baroness Chakrabarti and Baroness Miller of Chilthorne Domer, would reduce the risk of CHIS carrying out unauthorised criminal acts and mitigate the consequences of the same.

The framework introduced by the Covert Human Intelligence Sources (Criminal Conduct) Act 2021

3. The CHIS Act amends Part II of the Regulation of Investigatory Powers Act 2000 (“**RIPA 2000**”) to allow a range of “*authorising authorities*” to sanction covert human intelligence sources to commit criminal acts in certain contexts.¹ Such acts are rendered “*lawful for all purposes*” provided they are “*in accordance with the authorisation*”.²
4. When an authorising authority issues a CCA, the covert source is granted a forward-looking immunity from prosecution. Since the otherwise criminal act is “*lawful for all purposes*,” no criminal offence takes place. As such, the source who carried out the criminal act is not prosecuted, does not appear in court, and is not held criminally or civilly liable for their actions or any damage they may cause.³

¹ Section 29B(4) RIPA 2000 specifies that an authorisation may be granted if the person issuing it believes the authorisation is (i) necessary in the interests of national security, preventing or detecting crime or of preventing disorder, or the UK’s economic well-being; and (ii) the authorised conduct is proportionate to what is sought to be achieved by that conduct; s.27(1) RIPA 2000 specifies that the effect of an authorisation is to render the authorised conduct “*lawful for all purposes*” provided it is “*in accordance with the authorisation*”.

² Section 27(1)(b) RIPA 2000.

³ Section 27(2) RIPA 2000.

5. The Home Office claims that CHIS are “*crucial in preventing and safeguarding victims from many serious crimes including terrorism, drugs and firearms offences and child sexual exploitation.*”⁴ Because criminal conduct is “*an essential and inescapable feature of CHIS use*”, CCAs enable a CHIS to “*work their way into the heart of groups that would cause us harm, finding information and intelligence which other investigative measures may never detect.*”⁵

RIPA 2000 should be amended to introduce more oversight over CHIS’ criminal activity

6. The advance immunity framework model contains insufficient safeguards to control whether covert sources exceed the scope of their authorisation to engage in criminal acts. The risks of granting immunities to carry out criminal acts without controlling their scope are demonstrated by the events that preceded the case of ***R v Barkshire***.⁶
7. In that case, Mark Kennedy, an undercover police officer, had infiltrated a group of climate change activists. While undercover, Kennedy was involved in activities which went “*much further than the authorisation he was given*”⁷ and played a “*significant role in assisting, advising and supporting...the very activity for which [the activists] were prosecuted.*”⁸ In fact, the Court noted that he appeared to act as “*an agent provocateur.*”⁹ The Investigatory Powers Tribunal later also found that Kennedy inflicted inhuman and degrading treatment on a female activist in breach of Article 3 European Convention on Human Rights by deceiving her into a long-term intimate and sexual relationship.¹⁰ In fact, Kennedy engaged in sexual relationships with as many as ten other women during his deployment.¹¹
8. It was only due to timely newspaper reporting that the true nature of Mark Kennedy’s involvement was discovered, eventually leading to the group’s convictions being quashed.¹² He was never personally prosecuted.
9. Kennedy was a police officer and passed several tests that allowed him to join a unit of officers conducting undercover surveillance.¹³ However, CHIS need not be employed by a state agency or undergo training; they can be members of the public. Some of CHIS may be involved in extremism or criminal activities. It

⁴ [CHIS Factsheet](#)

⁵ Ibid.

⁶ *David Robert Barkshire and others v The Queen* (Court of Appeal Criminal Division, 20 July 2011) (“***R v Barkshire***”).

⁷ Ibid, para.18.

⁸ Ibid, para. 13.

⁹ Ibid, para.18.

¹⁰ <https://investigatorypowerstribunal.org.uk/judgement/kate-wilson-v-1-commissioner-of-police-of-the-metropolis-2-national-police-chiefs-council/>, Annex A.

¹¹ <https://www.vice.com/en/article/kate-wilson-mark-kennedy-undercover-cop-sex-with-activists/>.

¹² *R v Barkshire*, para 19.

¹³ [How a Married Undercover Cop Having Sex With Activists Killed a Climate Movement.](#)

is thus all the more important that means of oversight of whether their actions fall within the scope of their authorisation are provided.

10. In practice, CHISs and CCAs are not meant to be overly broad. The CHIS Code, updated in 2022, states at 6.46 that a *“Criminal Conduct Authorisation will not render lawful criminal conduct that goes beyond what is authorised by it. Nor will a Criminal Conduct Authorisation render lawful criminal conduct that is unrelated to the investigation or operation to which it relates.”* Paragraph 7.6 of this Code further clarifies that *“Criminal Conduct Authorisations should be specific in nature and should contain clear parameters. The public authority must ensure that the CHIS is clear about the criminal conduct in which they are being tasked to participate and fully understands the extent of the conduct authorised by the Criminal Conduct Authorisation. Where appropriate, the CHIS must be made aware that criminal conduct which goes beyond the conduct authorised, or which is unrelated to the conduct authorised, will not be lawful and may result in criminal sanctions, including prosecution.”* However, although CHISs and CCAs are intended to be specific, in practice it is hard to guarantee this because the covert nature of the work limits direct oversight.
11. The Investigatory Powers Commissioner (“**IPCO**”) has a statutory obligation to report his findings annually, including on CHISs and CCAs, pursuant to s.234 of the Investigatory Powers Act 2016. However, IPCO’s reports are delayed, with the Annual Report for 2023 published only on 22 May 2025,¹⁴ making it difficult for the public to scrutinize its contents in a timely manner.
12. The Annual Report for 2022 acknowledges that concerns had been identified regarding the *“breadth of some CCAs and their underlying CHIS authorisations”*.¹⁵ The Report later asserts without evidence or justification that *“Applicants and Authorising Officers (AOs) are now showing an improved explanation of proportionality in this context and explaining better the criminality permitted”*.¹⁶ However, the 2023 Annual Report states that a key *“theme of the feedback provided during 2023 was the need for applicants to explain more clearly how the proposed criminal conduct (authorised under section 29B RIPA) relates to the authorised conduct of a CHIS, enabling the AO to make an effective assessment of the necessity and proportionality.”* This indicates that, despite the more optimistic tone in 2022, by 2023 the clarity around the scope of authorised conduct had deteriorated again.
13. Concerningly, in 2022 four children were authorised as CHISs to help investigate Class A drugs and firearms. Two of these authorisations were reported late to the Investigatory Powers Commissioner, so they couldn’t be reviewed until 2023.¹⁷ In contrast, the 2023 Annual Report is much less forthcoming regarding children deployed as CHISs, stating that it *“can neither confirm nor deny the use of such sources by UKIC”*.¹⁸

¹⁴ [Annual Reports - IPCO](#)

¹⁵ IPCO Annual Report 2022, page 9.

¹⁶ Page 60 of the 2022 Annual Report.

¹⁷ Page 61 of the 2022 Annual Report.

¹⁸ Page 29 of the 2023 Annual Report.

14. The immunity model also raises a number of human rights considerations. The point at which the CCA is granted is when the HRA is engaged. For example, Article 3 ECHR protects individuals from being subjected to torture or inhuman or degrading treatment. The provision of immunity would make impossible any investigation of allegations of Article 3 infringement. By granting immunity for torture and inhuman or degrading treatment, Parliament would frustrate the UK's positive obligation to investigate and punish such acts. Similarly, Article 4 ECHR places "*a specific positive obligation on member States to penalise and prosecute effectively any act aimed at maintaining a person in a situation of slavery, servitude or forced or compulsory labour.*"¹⁹ JUSTICE recognises the important work that CHIS could offer in the fight against modern slavery. However, the simple fact that a slave master may act as a CHIS should not allow them to gain immunity for continuing such crimes, particularly when they are so egregious. By offering immunity at the discretion of public bodies, and rendering prosecution or investigation impossible, the UK could be in breach of its obligations under Article 4.
15. The Government claims that the Human Rights Act 1998 applies to public authorities, and as such all CCAs will be tightly bound so as to not violate these rights. At the same time, it maintains that no breach of the HRA would exist as such conduct would be justified for law enforcement purposes. We consider that Amendment 470 would ensure greater and more proportionate rights protections in this sensitive context through effective judicial oversight by way of a defence-based model, rather than the current immunity-based framework.

A defence-based model of Criminal Conduct Authorisation would introduce greater oversight over the covert sources' criminal activities while allowing public authorities to flexibly issue CCAs

16. A framework where the CHIS can raise the fact that they were granted a CCA as a defence to criminal charges has multiple advantages over the current advance immunity-based system. Under the defence-based model, public authorities would retain their current ability to authorise criminal conduct in circumstances specified in the CHIS Act.
17. For one, a defence-based approach would subject CHIS holders' activities to independent prosecutorial and judicial oversight after the covert source commits the offence. Under the current immunity model, no judge or prosecutor ever examines such cases given CCA-related conduct is rendered "lawful for all purposes". This means they do not benefit from as much scrutiny as such decisions should warrant. While proceedings involving CHIS may often occur behind closed doors for reasons of national security or privacy, the defence-based model guarantees a vital layer of accountability.
18. Similarly, the defence-based model (and in particular the judicial and prosecutorial oversight) would protect victims of CHIS actions and curb misuse of CCAs. By "*allowing a robust and open challenge by those wrongly affected by [covert sources'] activity in court,*"²⁰ a defence-based model would help uphold the public confidence in the justice system that the British state to sanction what would otherwise be law-breaking.

¹⁹ C.N. v. The United Kingdom (App No 4239/08) [2012] ECHR, paragraph 66.

²⁰ The Covert Human Intelligence Sources (Criminal Conduct) Bill 2020 | Garden Court Chambers.

19. Further, the current model risks placing individuals to whom a CHIS has been granted in precarious situations, particularly where those individuals, who are often seasoned criminals or untrained, sometimes vulnerable, members of the public, might misunderstand, or fail to act within such parameters. This risk is particularly profound with respect to children and vulnerable individuals, who may be placed at even higher risk of exploitation, intimidation or manipulation from their handler. JUSTICE has heard from Neil Woods, a former undercover operative and CHIS handler. He informed us of the severe manipulation that occurred when trying to recruit CHIS and the emotional burden it put on him as a professional. Because of this experience, he expressed concern at the effect this would have on a child or vulnerable person. The defence-based model is likely to sharpen the focus of authorising officers, as they would be aware that their decisions, and the CCAs that they issue, are more susceptible to judicial review, thereby enhancing the quality of decision-making.
20. International comparators underscore the disproportionate nature of the current immunity model. For instance, Canada's legislative framework does not confer blanket immunity on covert human intelligence sources; rather, it affords them a defence to prosecution, subject to judicial oversight. This approach balances operational effectiveness with accountability. Accordingly, the defence-based model we propose is both reasonable and proportionate, reflecting safeguards already adopted in comparable jurisdictions.

BARONESS CHAKRABARTI
BARONESS MILLER OF CHILTHORNE DOMER

Amendment 470

After Clause 196, insert the following new Clause—

“Safeguards against abuses by Covert Human Intelligence Sources

(1) Section 27 of the Regulation of Investigatory Powers Act 2000 is amended as follows.

(2) For subsection (1) substitute—

“(1) This Part applies to criminal conduct—

(a) under an authorisation under this Part, and

(b) where the conduct is in accordance with the authorisation.”.

(3) For subsection (2) substitute—

“(2) This part also applies to civil liability in relation to any conduct which—

(a) is incidental to any conduct within subsection (1), and

(b) is not itself conduct an authorisation or warrant for which is capable of being granted under a relevant enactment and might reasonably have been expected to have been sought in the case in question.

(2A) If a person acts in accordance with a criminal conduct authorisation under section 29B (covert human intelligence sources: criminal conduct authorisations), the nature of that authorisation and compliance with it shall be considered and deemed relevant to—

(a) any decision as to whether prosecution for a criminal offence by that person is in the public interest,

(b) any potential defences to such charges of criminal conduct, and

(c) any potential civil liability on the part of that person, and the quantum of any damages.

(2B) The protections in subsection (2A) only apply where the conduct is not carried out for the primary purpose of—

(a) encouraging or assisting, pursuant to sections 44 to 49 of the Serious Crime Act 2007 (inchoate offences), the commission of an offence by, or

(b) otherwise seeking to discredit,

the person, people or group subject to the authorised surveillance operation.””

Member's explanatory statement

These amendments replace provisions of the Regulation of Investigatory Powers Act 2000 as amended by the Covert Human Intelligence Sources Act 2021 granting complete advanced criminal and civil immunity for authorised operatives and agents, with a public interest defence as long as they did not act as agents provocateurs.

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